

1           MR. COLE: Based on my own familiarity with the  
2 record of the case and nothing more, I have no specific  
3 insight into the mind of the drafter of this issue, I have  
4 to say that I have interpreted it the same way Ms. Polivy  
5 has. That is, what happened in the genesis of this case was  
6 the fifth extension application in January 1991, which led  
7 to Press's initial pleadings and so forth. In Press's  
8 initial pleading, it argued that Rainbow -- I'm sorry. In  
9 the fifth extension request, Rainbow specifically said it  
10 was ready, willing and able to build. And there's a  
11 question on the form that says, "Are there representations  
12 made in your earlier CP applications accurate?" And they  
13 checked "Yes, they remain accurate." Which I believe taken  
14 together represented -- constituted representation by  
15 Rainbow to the Commission that they were, among other  
16 things, financially qualified.

17           Press argued that as of January/February 1991,  
18 they were not financially qualified based on the available  
19 information. Rainbow disputed that. Rainbow renewed its  
20 representations that it was ready, willing and able to go,  
21 and the sixth extension request in June of 1991, and Press  
22 again objected saying, no, the available record indicates to  
23 the contrary.

24           And I believe when the Court remanded the case, it  
25 was focusing on Press's arguments which related to the fifth

1 and sixth extension applications and pleadings and  
2 representations made in connection with those applications  
3 by Rainbow.

4 MR. SILBERMAN: Your Honor, if I may, on this  
5 issue.

6 JUDGE CHACHKIN: Yes.

7 MR. SILBERMAN: The Court seemed to be  
8 concerned -- I agree basically with Ms. Polivy and Mr. Cole  
9 on this. The Court seemed to be concerned about a conflict  
10 in representations made to the Commission in 1991 in  
11 connection with the extension applications that they were  
12 able -- ready, willing and able to construct and operate;  
13 whereas the District Court in the litigation involving the  
14 tower with Gannett. In that litigation the judge made some  
15 findings which were of concern to the Court of Appeals,  
16 saying that these findings show that they didn't have  
17 financing. And that was a question that was remanded.

18 And I think the major focus has to be on the time  
19 period that was at issue before the Court and in the  
20 extension applications because the Commission in its order  
21 of 1994, in paragraphs 46 and 47, the issue that was on  
22 appeal to the Court of Appeals seemed to be focusing on that  
23 period too, because the Commission began its discussion by  
24 saying that it recognized that the costs and financing  
25 proposals did not necessarily affect the way it is proposed,

1 and the Commission went to say they filed their application  
2 in '82. It's not remarkable that almost 10 years later they  
3 found it necessary to consider new financing sources.

4 So I think that while it may be relevant to go  
5 into basics, you know, what was their initial proposal and  
6 how did things go wrong, I think the major focus of the  
7 issue is on the period that was in dispute in the Court  
8 litigation in 1994.

9 MS. POLIVY: Well, Your Honor, I think that -- and  
10 Mr. Silberman is kind of on both sides here -- saying it  
11 would be nice to know back to 1982. I think what the --  
12 that the Commission -- the question is whether or not at the  
13 time we filed the fifth and sixth applications for extension  
14 Rainbow was financially qualified.

15 That encompasses the period of time that the  
16 District Court case also ensued. So that --

17 MR. SILBERMAN: If I may clarify.

18 I agree with you -- construction.

19 MS. POLIVY: Oh, okay. So our showing, as far as  
20 we're concerned, is the period of 1991, 1992. And I think  
21 that that's the period that Press sought to raise an issue  
22 that the Commission initially rejected, and then said as  
23 long as we're here, we'll put in an issue about it. And on  
24 the remand, the Commission has put in the issue. But the  
25 issue is that period of 1991, 1992.

1 JUDGE CHACHKIN: Well, they didn't frame it that  
2 way.

3 Mr. Cole, if you agree with that --

4 MR. COLE: Well, I would just like -- I agree to  
5 the extent that I believe the Commission is interested in  
6 the period starting in 1991. I believe it is starting at  
7 1991 and continuously forward. Not just 1991 and 1992.

8 MS. POLIVY: Well, Your Honor, continuously, fine.  
9 The station is built and on the air.

10 JUDGE CHACHKIN: Well, until the time I guess that  
11 the station is built, is that what your view is?

12 MR. COLE: Until -- certainly until the ex parte  
13 meeting.

14 JUDGE CHACHKIN: When was that?

15 MR. COLE: July 1, 1993.

16 MS. POLIVY: Your Honor, I --

17 JUDGE CHACHKIN: In any event --

18 MS. POLIVY: Can we agree then that we'll take the  
19 period 1991 to 1993?

20 JUDGE CHACHKIN: The parties view the issue in  
21 that fashion and they're more familiar with what's developed  
22 in the Court of Appeal, I have no problem. We'll just --

23 MS. POLIVY: That takes you through the --

24 JUDGE CHACHKIN: That's the way the issue -- as I  
25 say, the issue wasn't framed in that fashion. It doesn't

1 deal with any extension requests.

2 MS. POLIVY: The ex parte --

3 JUDGE CHACHKIN: But I'm not going to dispute the  
4 parties. If the parties -- all the parties are in agreement  
5 with that position that we're dealing with the 1991-'93  
6 period --

7 MR. COLE: Your Honor.

8 MS. POLIVY: The ex parte --

9 MR. COLE: The 1991 -- my position is 1991 through  
10 continuously until 1994, even 1995.

11 JUDGE CHACHKIN: Well, but all the parties agree  
12 it's post 1991.

13 MR. COLE: Yes.

14 JUDGE CHACHKIN: After, not before.

15 MR. COLE: 1991, that's right.

16 JUDGE CHACHKIN: I'm not going to --

17 MS. POLIVY: Your Honor.

18 JUDGE CHACHKIN: Go ahead, Ms. Polivy.

19 MS. POLIVY: Your Honor, it becomes absurd to say  
20 that once a station is on the air we have to prove that we  
21 have the money to construct and operate for three months.

22 JUDGE CHACHKIN: Is that what you're saying? Once  
23 the station was on the air --

24 MR. COLE: I want to know where the money came  
25 from and when it came in.

1 MS. POLIVY: Well, Your Honor, that has nothing to  
2 do with financial misrepresentation. That's just --

3 MR. COLE: Your Honor, if they're representing to  
4 the Commission that they're financial qualified, and the  
5 money they used to actually construct the station was not  
6 available to them until significantly after those  
7 representations were made. I believe we're entitled to know  
8 that as relevant to the issue.

9 MS. POLIVY: No, Your Honor --

10 MR. SILBERMAN: We agree with that, Your Honor.

11 MS. POLIVY: Wait a minute. What are we agreeing  
12 with?

13 Your Honor, we have to show that in 1991 and 1992  
14 and 1993 that we had the funds available to construct and  
15 operate. Once the station is on the air and operating, what  
16 possible argument could there be that we have to show that  
17 we had the funds -- I don't even understand how you frame  
18 the question since the issue is whether we lacked candor or  
19 made misrepresentation with respect to financial  
20 qualifications regarding our ability to construct and  
21 initially operate the station. Certainly once it's  
22 constructed and initially operated, there is no further  
23 possibility of being involved in the Commission's financial  
24 qualifications rules.

25 JUDGE CHACHKIN: Well, I'm not going to at this

1 time rule on what's relevant or not relevant. We're dealing  
2 with any representations when they're concerning your  
3 financial ability, I assume during the period of 1991 and  
4 1993, and whatever evidence may be relevant to that, is  
5 certainly appropriate.

6 But I just wanted to make sure that we now are all  
7 in agreement that we're not dealing with the Applicant's  
8 financial ability back to 1982.

9 MR. COLE: I concur with that, Your Honor.

10 JUDGE CHACHKIN: I'm glad we had our discussion  
11 and we agreed to that so there won't be any question later  
12 on as to that.

13 The next issue deals with the nature of the tower  
14 litigation. Now, is there any need for clarification of  
15 that issue? Is that issue pretty clear in everyone's mind  
16 exactly what the issue deals with?

17 MS. POLIVY: Well, we agree on what the tower  
18 litigation is I assume.

19 MR. COLE: The tower litigation, as I understand  
20 it, is Ray v. Gannett before Judge Marcus.

21 MS. POLIVY: Well, and before the state court  
22 subsequently.

23 JUDGE CHACHKIN: All right. And finally the  
24 waiver issue, I assume we don't need an extended discussion  
25 on that unless the parties want to bring that up.

1 All right. So the question is we haven't  
2 established any dates of any kind. We've just agreed  
3 basically -- all we agreed to we're going to try -- we're  
4 going to follow the Freedom of Information Act requirements  
5 in obtaining documents from the Commission, and also that  
6 the separated trial staff is going to prepare -- submit  
7 something to General Counsel's Office which will be then  
8 given to the Commission dealing with the right to depose  
9 Commission witnesses.

10 MR. SILBERMAN: And to clarify that, we will name  
11 the people --

12 JUDGE CHACHKIN: And if Ms. Polivy --

13 MR. SILBERMAN: -- in that memorandum and in the  
14 proposed order.

15 JUDGE CHACHKIN: And if Ms. Polivy has any names,  
16 the parties should get together and agree on the names, and  
17 if Ms. Polivy wants any additional names, then you can  
18 decide whether you want to include that or not or leave it  
19 for Ms. Polivy to file something.

20 In any event, the point is we have not agreed on  
21 any dates for discovery. I ask the parties to get together  
22 and come up with a schedule for the hearing. Obviously I  
23 assume from what's taken place here that the parties are not  
24 prepared to go to hearing in March.

25 MS. POLIVY: No, Your Honor.

1 MR. SILBERMAN: I don't think so, Your Honor.

2 JUDGE CHACHKIN: Well, I wanted the parties to  
3 give me a schedule.

4 MS. POLIVY: I think perhaps the most expeditious  
5 way for us to proceed. The parties are all perfectly  
6 amenable to sitting down and coming up with a schedule. We  
7 had two outstanding questions and I think if we could  
8 reschedule a meeting of the parties and then take -- with me  
9 being that the best we can do is to say 60 days after such  
10 and such happens we'll do so and so, because we don't know  
11 how long the Commission may take in ruling on the request  
12 for depositions.

13 But I think we can come up with a document  
14 schedule and have some notion as to how long we think we'll  
15 need thereafter and at least propose a date for hearing.  
16 But I think that the parties probably should meet again and  
17 see if we can come up with a schedule for you.

18 MR. COLE: Your Honor, I think it might be helpful  
19 if you or if we can all agree at this point for the deadline  
20 for us to file our Freedom of Information Act request,  
21 because that is one piece of discovery that I think we're  
22 all agreed should go forward, and I think given Your Honor's  
23 order this morning there is no question that's the way we  
24 will be proceeding. And since I think we're all in  
25 agreement that documents should come first and then

1 depositions or further discovery after that. That would at  
2 least get the ball rolling

3 MR. SILBERMAN: Excuse me. May I ask for  
4 clarification, Your Honor?

5 It's my understanding that not only are we going  
6 to serve a copy of our memorandum and proposed order on the  
7 parties, but that their Freedom of Information Act request  
8 would be served on us as well.

9 JUDGE CHACHKIN: Yes.

10 MR. SILBERMAN: Is that correct?

11 JUDGE CHACHKIN: Yes.

12 MR. SILBERMAN: Thank you.

13 JUDGE CHACHKIN: I think the parties should be  
14 aware of what the other parties are doing.

15 All right. Ms. Polivy, when can you prepare this  
16 Freedom of Information request?

17 MS. POLIVY: Your Honor, I'm ashamed to say that I  
18 will be away from the 7th to the 17th of February.

19 JUDGE CHACHKIN: Well, there's still a few days in  
20 February before you go away.

21 MS. POLIVY: I know. I would ask your indulgence  
22 not to have to do that. Given that, I would ask that  
23 February 25th, if that would be agreeable. I'm not sure  
24 what day of the week that is.

25 MR. SILBERMAN: February 25th?

1 MS. POLIVY: Yes.

2 JUDGE CHACHKIN: Do we need that much time to --

3 MR. SILBERMAN: That's a Sunday, the 25th.

4 MS. POLIVY: The 26th then.

5 JUDGE CHACHKIN: No, the 26th is a Sunday.

6 MS. POLIVY: The 26th is a Sunday?

7 JUDGE CHACHKIN: Yes.

8 MS. POLIVY: I would ask --

9 MR. COLE: The 26th is a Monday. The 26th is a  
10 Monday. February 26th is a Monday.

11 JUDGE CHACHKIN: Oh, wait, it is? Oh, I brought  
12 the wrong calendar.

13 MS. POLIVY: February 25th.

14 MR. COLE: I'm perfectly willing to defer to Your  
15 Honor.

16 (Laughter)

17 MS. POLIVY: Was it a good year?

18 JUDGE CHACHKIN: I'll have to bring a new one.

19 MS. POLIVY: February 25th, Your Honor.

20 JUDGE CHACHKIN: Why that long? I mean this is  
21 delaying everything then. We're not going to get -- I mean  
22 how difficult is it --

23 MS. POLIVY: The other alternative is I would have  
24 to do it before I left.

25 JUDGE CHACHKIN: Well, how difficult is it to put

1 together one of these?

2 MS. POLIVY: Well, I think it's rather complete.

3 MS. FARHAT: The 26th is a Monday.

4 JUDGE CHACHKIN: And when will the Bureau file  
5 this document with the General Counsel?

6 MR. SILBERMAN: The Commission, Your Honor?

7 JUDGE CHACHKIN: Yeah, with the Commission.  
8 Through the vehicle of the General Counsel.

9 MR. BLOCK: We're prepared to, as you said, to  
10 expedite that and have that in the General Counsel's hands  
11 on this Friday, and ask him to expedite it being transmitted  
12 to the Commission for Commission decision at the earliest  
13 possible time.

14 In light of the fact that the FOIA request may be  
15 several weeks delayed, maybe perhaps the expedition of that  
16 is not as urgent.

17 JUDGE CHACHKIN: Well, that's what I'm inclined --  
18 I want to get this thing moving and the way we're proceeding  
19 now to wait until February 26th for the Freedom of  
20 Information -- and I don't know how long that takes before  
21 they process it, but I assume it takes some time.

22 MR. BLOCK: It will take some time. There's a 10-  
23 day period for a first response and another 10 days for the  
24 second response, so you're looking at probably 20 days just  
25 as an initial matter. There's also going to be extensions

1 to that depending on how complex it is. This is not a case  
2 in which there's a whole Commission-wide search. So 20 days  
3 probably is an accurate time period, but I really can't  
4 predict because I'm not -- I won't be doing it and I'm not  
5 involved in the gathering of it.

6 JUDGE CHACHKIN: Ms. Polivy, I'm afraid I'm going  
7 to have to require you to do this before you leave or have  
8 your partner do it so that certainly within the next two  
9 weeks it's going to have to be done so that we can move this  
10 case along. Otherwise we're talking about April sometime  
11 before we even get the documents and that's going to delay  
12 the hearing much too long.

13 MR. SILBERMAN: Your Honor, may I get  
14 clarification from Mr. Dziedzic on something?

15 JUDGE CHACHKIN: Go ahead.

16 MR. SILBERMAN: Mr. Dziedzic indicated that he may  
17 object or file a pleading in response to a request by the  
18 General Counsel for permission or authorization for  
19 Commission personnel to testify. If that is the case, that  
20 will probably delay this too because there will be  
21 litigation on that, because if he files -- I'm not saying he  
22 has no right to file this on behalf of potential witnesses,  
23 but then the other parties may be in the position of having  
24 to file pleadings with the Commission in response to his  
25 pleadings, and that's going to delay us down the road.

1           So can I get clarification if Mr. Dziedzic intends  
2   to object to us going to the Commission with a proposed  
3   order, just giving authority for named persons, including  
4   his clients? That would be his objection, of course.

5           MR. DZIEDZIC: Well, I'll want to discuss with my  
6   clients what has transpired today. I think Commission  
7   counsel has appropriately indicated that no deliberative  
8   process or attorney-client privilege questions remain in  
9   their view, and I accept their statement that they are  
10   authorized to waive those privileges to the extent that they  
11   still existed on behalf of the Commission.

12           And I simply wanted somebody from the Commission  
13   to say it, and now it's been said.

14           MR. BLOCK: Well, if I may say, I hope I haven't  
15   said that, because there are certainly questions that one  
16   could expect that go beyond the scope of the issue, that  
17   would be objectionable not only for relevance, but also for  
18   other purposes as well.

19           What I did say is that what is already out there  
20   today is out there, and there's nothing left for that.  
21   We're not waiving something that has not yet been disclosed  
22   to the world. That has to be relevant first and then we'll  
23   decide.

24           JUDGE CHACHKIN: But certainly insofar as any  
25   Commission employees have given testimony --

1 MR. BLOCK: That's right.

2 MR. DZIEDZIC: I hope that helps you clarify --

3 MR. COLE: Your Honor, could I ask Mr. Dziedzic a  
4 clarification as well?

5 JUDGE CHACHKIN: Yes.

6 MR. COLE: Mr. Dziedzic, as I understand your  
7 statement this morning, you are representing Mr. Stewart,  
8 Ms. Kreisman and Mr. Pendarvis, is that correct?

9 MR. DZIEDZIC: That's correct.

10 MR. COLE: And is that -- could you state whether  
11 that's in your capacity as Assistant Division Chief of the  
12 Video Services Division or in some other capacity?

13 MR. DZIEDZIC: It has nothing to do with my  
14 capacity as Assistant Division Chief of Video Services  
15 Division.

16 MR. COLE: And are you representing -- you are  
17 representing them personally but not because of their  
18 official status but as they are your supervisors, is that  
19 correct? Or Ms. Kreisman is your immediate supervisor?

20 MR. DZIEDZIC: That's correct.

21 MR. COLE: And Mr. Stewart is her immediate  
22 supervisor.

23 MR. DZIEDZIC: And mine too.

24 MR. COLE: And yours as well.

25 Can you state whether the Bureau was providing

1 counsel in the same way as you for any other Bureau  
2 personnel?

3 MR. DZIEDZIC: I have been approached by those  
4 three individuals to provide representation in the context  
5 of this proceeding, and beyond that, I really can't.

6 JUDGE CHACHKIN: Is there any bar for a Commission  
7 employee to represent another Commission employee in a  
8 Commission proceeding? I raise that.

9 MS. POLIVY: No, I don't think so. It's been done  
10 before.

11 MR. DZIEDZIC: My understanding is that none of  
12 the parties to this proceeding were going to object to my  
13 representation.

14 JUDGE CHACHKIN: That's not what I'm raising. I'm  
15 raising the question of whether it's permissible for a  
16 Commission employee to represent another Commission employee  
17 in a Commission proceeding. That's the question I'm  
18 raising. It's a novel question. I don't know if it's ever  
19 happened before.

20 MR. DZIEDZIC: Well, obviously I believe it is and  
21 my clients believe it is. If this becomes a matter of issue  
22 before the Commission, then at some subsequent time the  
23 Commission will have an opportunity to rule on it.

24 JUDGE CHACHKIN: I'm not going to raise it, but  
25 I'm just -- myself, I'm not going to make a ruling, but if

1 the parties want to raise it, it's something for them to  
2 consider.

3 MR. DZIEDZIC: Thank you, Your Honor.

4 MR. SILBERMAN: Are you a member of the bar, Mr.  
5 Dziedzic?

6 MS. POLIVY: I haven't checked recently.

7 MR. COLE: And one other -- a complete point for  
8 clarification.

9 Mr. Block, and I think Mr. Silberman too, has  
10 occasionally referred to sending this -- their request to  
11 the General Counsel and referred once to Mr. Kennard. Mr.  
12 Kennard is recused from this case as I understand it. And  
13 so you should be careful to --

14 MR. SILBERMAN: Good point.

15 MR. COLE: -- address correspondence to -- I  
16 believe Mr. Wright is Acting General Counsel.

17 MR. SILBERMAN: Counsel for Press is absolutely  
18 correct. I referred to Mr. Kennard. That was in error. We  
19 will not involve Mr. Kennard in this. The memorandum will  
20 be addressed to Mr. Wright or Mr. Solomon, who are the two  
21 deputies who are recused in this case.

22 MS. POLIVY: Your Honor --

23 MR. DZIEDZIC: Your Honor, I was responding to  
24 questions by Mr. Silberman.

25 MR. COLE: I'm sorry. I apologize for

1 interrupting. Sorry.

2 MR. DZIEDZIC: We'll have to wait and see what you  
3 file, and we would like any oral depositions, to the extent  
4 that they're necessary, to be very limited in scope, and I  
5 would hope that anything that would be filed with the  
6 Commission seeking the deposition of any of the three named  
7 individuals would make it plain as to what the extent of the  
8 scope of the deposition was. And it may be that we would  
9 disagree with that, but insofar as some sort of blanket pro  
10 forma objection to appearance, no.

11 JUDGE CHACHKIN: All right. So what's you're  
12 saying in effect is you want the parties to file -- assuming  
13 the Commission approves of oral depositions of these  
14 employees, you would want any party who in fact wants to  
15 depose these individuals to file a notice to take deposition  
16 stating as they do -- as the rules require the purpose of a  
17 deposition in which you would then, as their representative,  
18 have a right to object to, and I would rule on the matter.

19 Is that where we are?

20 MR. DZIEDZIC: Well, I hadn't got quite to that  
21 point yet, although I agree with that. I am concerned about  
22 the scope of the depositions that take place in this  
23 proceeding.

24 JUDGE CHACHKIN: Well, you would have a right to  
25 object to that, because the parties in their notice would

1 have to indicate what the relevant purpose of the deposition  
2 is as the rules require. And then you as --

3 MR. DZIEDZIC: I understand that.

4 JUDGE CHACHKIN: All right.

5 MR. DZIEDZIC: But I'm trying to respond to Mr.  
6 Silberman's question. And my response is that it may be  
7 that we will file comments in response to his submission,  
8 separated trial staff's submission, that seek a restrictive  
9 ruling from the Commission on the nature of the depositions.  
10 We'll have to wait and see what Mr. Silberman -- I mean as  
11 Mr. Cole indicated. There's a lot of sworn testimony out  
12 there including affidavits prepared by these three persons  
13 and submitted to the Court of Appeals. To call these  
14 individuals in and have them testify once again to what they  
15 put in those affidavits seems --

16 MS. POLIVY: Well, Your Honor --

17 JUDGE CHACHKIN: Well, Mr. Dziedzic, you will, if  
18 you want to raise that defense as a grounds why there's no  
19 need to depose them, you can do it in objecting to the  
20 notice to take deposition.

21 All they're going to do now is get a waiver of the  
22 rules which would have permitted oral depositions in lieu of  
23 written interrogatories.

24 MR. DZIEDZIC: If that's what they're going to do,  
25 then we will be obligated to make a submission to the

1 Commission --

2 JUDGE CHACHKIN: Well, I don't know if you have  
3 any authority to make a submission to the Commission, since  
4 the Commission could waive its rules at any time. And I  
5 don't know who you would represent that would give you the  
6 authority. You are not a party in this proceeding. So I  
7 don't know what authority you would have to file any  
8 comments. But that's up to the Commission.

9 MR. DZIEDZIC: The Commission determined that I  
10 didn't have authority to file a document on behalf of my  
11 clients if it's a rule.

12 MS. POLIVY: Your Honor, may I suggest that our  
13 exploration this morning I think suggested that maybe  
14 instead of having the Commission file something with the  
15 General Counsel to go to the Commission, perhaps Commission  
16 staff should simply file a request with the Commission and  
17 then it would take the normal pleading that --

18 MR. SILBERMAN: May I respond to that?

19 MS. POLIVY: And ask for expedition. Because I  
20 think all the General Counsel seems to be doing is putting  
21 another step in here that is not going to expedite things  
22 but otherwise.

23 MR. SILBERMAN: I have really no objection to that  
24 procedure either. The reason we chose the route we  
25 mentioned, which is a memorandum to those members of the

1 senior staff of the General Counsel who are not recused, was  
2 because we could ask that there be expedition of that that a  
3 proposed order would be attached and that we anticipate that  
4 it would be much speedier than what counsel just proposed,  
5 which is filing a motion with the Commission with request  
6 for expedited action because from my experience with the  
7 Commission procedures, that an urgent slip could be put on  
8 top of the agenda item and a proposal could be walked around  
9 to the Chairman's Office and the other Commissioners'  
10 offices and this could be expedited, and that's I think what  
11 we want here.

12 We will -- if all the parties agree that we want  
13 to take our chances and file a formal motion asking for  
14 Commission authorization for these people to testify --

15 MS. POLIVY: I don't --

16 MR. SILBERMAN: -- we would do that, but I think,  
17 if counsel will hear me out -- I think what that would do,  
18 even with a request for expedited treatment, would delay  
19 this. Whereas we think we have a mechanism here for  
20 possibly getting faster action than we would otherwise.

21 MS. POLIVY: Your Honor, I have no objection if  
22 it's faster to doing it. What I foresee is if we're going  
23 to get involved in --

24 JUDGE CHACHKIN: Well, we'll see, we'll see.

25 MS. POLIVY: -- strange proceedings with strange

1 filings, you know, to the extent that we deviate from that  
2 which is normally provided for, just confuses matters more.

3 JUDGE CHACHKIN: We'll proceed in the manner we  
4 discussed. I'm going to establish February 12th as the date  
5 to file any Freedom of Information requests. If any of the  
6 parties want to file, they have to file it by that date.

7 MR. SILBERMAN: Pardon, Your Honor?

8 JUDGE CHACHKIN: February 12th.

9 MR. SILBERMAN: For?

10 JUDGE CHACHKIN: For Freedom of Information  
11 requests.

12 MR. SILBERMAN: Oh, okay. Sorry.

13 JUDGE CHACHKIN: Also, Ms. Polivy, when are you  
14 going to return you say? March, February? When?

15 MS. POLIVY: February 17th.

16 JUDGE CHACHKIN: February 17th.

17 MS. POLIVY: Actually that's a weekend. So --

18 JUDGE CHACHKIN: All right. I think it would be  
19 useful to have a further conference on February -- well,  
20 let's make it February 23rd.

21 MR. SILBERMAN: Your Honor, may I?

22 JUDGE CHACHKIN: Yes.

23 MR. SILBERMAN: I have a brief due that day.

24 JUDGE CHACHKIN: Well, that's fine. What day  
25 during that week would be suitable for you?

1 MS. POLIVY: The 24th? What day of the week is  
2 that, by the way?

3 JUDGE CHACHKIN: February 23rd happens to be a  
4 Friday.

5 MS. POLIVY: Oh. The 22nd? No -- should we make  
6 it the next week?

7 JUDGE CHACHKIN: February 26th, is that better?

8 MR. SILBERMAN: Yes, Your Honor.

9 JUDGE CHACHKIN: All right. We'll have a further  
10 conference on February 26th. At that time the parties  
11 should -- hopefully will reach some stipulations at which  
12 they've discussed in their earlier letter and also we'll  
13 have a schedule for discovery and a hearing schedule. And if  
14 the parties are unable to come up with a hearing schedule, I  
15 will specify one. But I intend to move this proceeding as  
16 expeditiously as I can.

17 Now, there's also been a request for admissions as  
18 mentioned in the letter of January 25th. The Commission's  
19 rules describe the time to file such a request for  
20 admissions. I'm not aware of any request for admissions  
21 having been filed.

22 MS. POLIVY: Your Honor, the parties --

23 JUDGE CHACHKIN: That's not discovery.

24 MS. POLIVY: I understand. What the parties  
25 agreed to though was an admissions schedule after discovery

1 so that we have the documents and the depositions and then  
2 we can reach stipulations and perhaps cut down the trial  
3 time that will be necessary.

4 JUDGE CHACHKIN: I don't -- is that something the  
5 parties agree to? The request for admissions after the  
6 completion of discovery? I thought that's the purpose of  
7 avoiding discovery is request for admissions. Obviously if  
8 the parties admit to things, there's no need for discovery.  
9 I mean that's just turning things around.

10 MS. POLIVY: Well, Your Honor, it's the same  
11 process that would be used in Federal Court. Once discovery  
12 is made, it cuts down the trial time.

13 JUDGE CHACHKIN: Well, if you had discovery, you  
14 don't need admissions. The point is to avoid as much  
15 discovery as you can by having admissions. I don't -- I  
16 mean that's why the rules read that way to save time.

17 MS. POLIVY: Just a suggestion.

18 JUDGE CHACHKIN: When was --

19 MS. POLIVY: We contemplated that after discovery.

20 JUDGE CHACHKIN: Well, I don't think that's  
21 appropriate. The parties can reach stipulations if they  
22 want after discovery, but as far as admission is concerned,  
23 that's the way to shortcut discovery.

24 Now, the rules do provide a time frame for seeking  
25 admissions. I think the time has expired, if I'm not --

1 MS. POLIVY: Yes, sir.

2 JUDGE CHACHKIN: I'm willing to extend it for a  
3 reasonable time but that's it. Then the parties I say can  
4 reach stipulations. But certainly by February 26th, any  
5 request for admissions will be required to be filed. And I  
6 think that's being generous.

7 All right. So I'm going to conference on February  
8 26th and also any request for admission by February 26th.  
9 As I indicated, on February 26th I intend to establish dates  
10 for discovery, for completion of discovery and for the trial  
11 of this case. And hopefully this hearing should be no later  
12 than June, hopefully. Hopefully earlier, but certainly no  
13 later than that so the parties should take that into  
14 consideration when they discuss dates.

15 MR. COLE: Your Honor --

16 JUDGE CHACHKIN: Yes.

17 MR. COLE: I have just two points, if we're about  
18 ready to wrap up. One is, and this may be incredibly  
19 premature, but just to let everybody know. I would prefer  
20 to have all witnesses, both in discovery and the trial,  
21 sequestered from one another. I'll get a sequestration  
22 order. I don't expect that will be controversial, but I  
23 just thought I'd put that on the record now.

24 JUDGE CHACHKIN: Does anyone have any objections  
25 to the parties being sequestered?